

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Atty. Docket No: 024754/0114

In re patent application of Dong *et al.*

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Serial No.: 09/252,828

Group Art Unit: 1641

Filed: February 19, 1991

Examiner: Lisa Cook

For: RECOMBINANT BIOLOGICALLY ACTIVE HUMAN ZONA PELLUCIDA
PROTEIN 3(Hzp3) TO TEST MALE FERTILITY

FAX RECEIVED

FEB 28 2001

Assistant Commissioner for Patents
Washington, D.C. 20231

PETITIONS OFFICE

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNINTENTIONALLY UNDER 37 CFR §1.137(b)**

Sir:

The above-identified application went abandoned when the Examiner deemed non-responsive a *bona fide* response, filed by applicants on February 5, 2001. In that response, applicants addressed a request for an election of species, dated January 3, 2001, and also amended claims 27-29, 34, 36-38 and 40, simply to correct a sequence identification number.

Events

1. In a response dated March 10, 2000, applicants proposed to amend Figure 1 to correct two typographical errors. Specifically, Figure 1 (A) omitted the Cys residue at position 327 and (B) disclosed Glu instead of Gln residue at position 336. Support for this correction was found, *inter alia*, in original Figure 2.

2. In an amendment of November 14, 2000, in response to notice under §§ 1.821-825, applicants inadvertently submitted the erroneous sequence of as-filed Figure 1 as SEQ ID NO 1 and Figure 2 as SEQ ID NO 2. In fact, Figures 1 and 2 should recite the same sequence, which is incorrect in Figure 1 and correct in Figure 2.

3. Recognizing that SEQ ID NO 1 was incorrect, applicants augmented their response to the aforementioned species-election request by also amending all of the relevant claims to recite SEQ ID NO 2, instead of SEQ ID NO 1. In the same vein, they corrected claim 44 to prescribe the sequence of Figure 2.

4. On February 25, 2001, a representative of applicants, Manhew E. Mulkeen, contacted Examiner Lisa Cook by telephone and was informed that the subject application was abandoned. Specifically, Examiner Cook stated that she had abandoned the application because she did not understand why the claims were revised to effect the above-described correction change from SEQ ID NO 1 to SEQ ID NO 2. In view of Mr. Mulkeen's explanation, the Examiner admitted that the abandonment was in error.

Reply

Applicants hereby petition the Commissioner to revive U.S. Application Serial No. 09/252,828, which was erroneously abandoned by the U.S. Patent and Trademark Office. However, in order to avoid further delay, applicants are petitioning to have the present application revived under the standards for unintentional abandonment.

The following are attached:

- (1) The required Response to Election of Species;
- (2) Petition for Extension of Time for one month with extension fee of \$55;
- (3) The petition fee of \$620, as set forth in 37 C.F.R. § 1.17(m).

Since this utility application was filed on or after June 8, 1995, no terminal disclaimer is required.

Applicants in way concede the abandonment of the present application was proper as the response to the election of species requirement was a lawful, *bona fide* response in compliance with PTO rules and procedure. Indeed, the Examiner has admitted that the abandonment was improper.

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Applicants believe that the requirements of 37 C.F.R. § 1.137(b) are met, and they respectfully urge the Commissioner to revive their application. If there are any questions regarding this submission, the Patent Office is invited to contact the undersigned attorney of record at the telephone number set forth below.

Respectfully submitted,

2-28-01
Date

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I hereby certify that this paper is being facsimile transmitted to the Patent and Trademark Office, Office of Petitions at (703) 308- 6916 on the date shown below.

Date: 2-28-01

Matthew E. Mulkeen
Matthew E. Mulkeen